

SPAIN

Suspicion, discrimination and surveillance:
the impact of counter-terrorism law and policy on
racialised groups at risk of racism in Europe



EXECUTIVE
SUMMARY



european network against racism

Background

Counter-terrorism has been an area of increasing global and European policy coordination. The Council of the European Union issued its first Framework Decision on Combatting Terrorism in 2002 and first adopted a counter-terrorism strategy in 2005,¹ as well as a Strategy for Radicalisation and Recruitment to Terrorism.² The 2017 Framework Directive on Combatting Terrorism requires the European Commission to submit a report by September 2021 on the Directive's impact "on fundamental rights and freedoms, including on non-discrimination, and the rule of law".³

ENAR has examined the experiences of counter-terrorism and counter-radicalisation measures by members of groups that are at heightened risk of facing discrimination and racism in France, Germany, Hungary, Poland and Spain. Our research contributes to understanding how state policies are experienced and their impact on the exercise of fundamental rights and freedoms.

This summary identifies the key themes and emerging findings from the research in Spain and draws on:

- In-depth qualitative interviews with 6 policy makers and practitioners working in the field of counter-terrorism and national security
- In-depth qualitative interviews with 17 key actors from civil society, including those working in community organisations most impacted by security measures, and human rights organisations.
- 3 focus groups with individuals from different Muslim communities in Madrid and Barcelona.
- A review of existing research literature and policy and civil society reports
- A roundtable discussion of initial findings and exploration of potential recommendations with policy makers, practitioners and civil society actors.

1 Council of the European Union, 14469/4/05 REV 4

2 The European Union strategy for combating radicalisation and recruitment, EU Council document 14781/1/05, 24 November 2005

3 Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA, Article 29(2).

Introduction

With the receding threat of separatist political violence, Spanish security policy is focused on terrorism by individuals or groups affiliated to or inspired by ISIS. This research focuses on the experiences of Muslims in Spain, as they face a significant risk of discrimination and the violation of their rights in the implementation of counter-terrorism and counter-radicalisation laws and policies.

The research was conducted in Madrid and Barcelona, two cities that have experienced ISIS and Al-Qaeda related terrorist attacks and have been at the forefront of implementing counter-terrorism and counter-radicalisation policies. These are also cities where civil society groups and anti-racism organisations have challenged security measures as discriminatory and criminalising.

Spain has several decades of experience of terrorism. Over 800 deaths have been attributed to the Basque separatist group ETA by the time it announced its formal dissolution in 2018. In 2004, individuals affiliated to Al-Qaeda detonated ten bombs killing 181 people on trains in Madrid. In August 2017, ISIS inspired attacks in Barcelona and Cambril killed 14 people and injured over 100.

The anti-terrorism policies have a long history in Spain, either because of the penal and penitentiary policies applied to the armed group ETA and the abertzale movement - still in force – Resistencia Galega or GRAPO; and later to the anarchist movement or as it has been seen recently, with some allusions to the Committees for the

Defence of the Republic (CDR) in the framework of the Catalan movement.

While police and surveillance activities of the intelligence services were reinforced after the 2004 Madrid attacks, the approach to counter-terrorism has been changing towards a more multi-agency trend that seeks coordination and collaboration between security forces and other state actors including teachers, educators and social workers, as well as community representatives, and families.

In 2014, as part of its National Security Strategy, the Centre for Intelligence against Terrorism and Organized Crime (CITCO) was created to oversee the implementation and development of the Comprehensive Strategy against International Terrorism and Radicalization (EICTIR). The public debate on anti-terrorism laws, amended in 2015 to reform the Penal Code⁴ were framed by politicians as needed to address “religious-based” terrorism. A National Strategic Plan to Combat Violent Radicalisation (PEN-LCRV, 2015), signalled an increased focus on prevention. Autonomous and local measures that directly impact the population derive from the framework of this Plan, whether in the educational, health, social services or other fields.

Following the 2017 attacks in Barcelona, a revised National Security Strategy was adopted, and in February 2019, a new National Strategy against Terrorism was launched (ENCT 2019). The strategy focuses on what it identifies as ‘jihadists’ terrorism and the threat from returning foreign fighters.⁵

4 Organic Law 2/2015, Anti-Terror Law and Organic Law 4/2015, of March 30, on the protection of public safety

5 Oscar Lopez-Fonseca, ‘Spain launches new counter-terrorism strategy to fight Jihadism and the “rise of extremism”’ *El Pais* (26 February 2019), accessed 01 April 2021: https://english.elpais.com/elpais/2019/02/26/inenglish/1551173888_956366.html

Key Findings

1. Pre-emptive criminal offences and surveillance

Wide ranging surveillance was a feature of the state's approach to tackling political violence relating to ETA. However, surveillance in relation to ISIS and Al-Qaeda inspired political violence is more expansive and draws a larger section of the population into its ambit. There are two key drivers for this expansion of surveillance. Since 2015, Spain has expanded the range and scope of terrorism offences, this reflects a broader shift in EU and international counter-terrorism laws towards pre-emptive offences, that is criminalisation of conduct that does not involve any direct harm to others, but which is criminalised as it is seen as indicative or predictive of future violent actions. Such new offences expand the scope for state surveillance to enable surveillance based on expressions of belief or activities that are viewed as indicators of future risk (ordering halal food at school, attending dawn prayers, attending Salafi affiliated mosques). Furthermore, surveillance is no longer restricted to suspected members of terrorist organisations but extends into the communities that the terrorist organisations are believed to recruit from.

Our focus groups and interviews reveal a widespread experience of constant state surveillance. The most direct experience of increased surveillance and control is from police stops that are perceived to be based on racial profiling. Stops by uniformed police has become a normalised part of their everyday experience of public spaces for some Muslims. Those who live in neighbourhoods with significant migrant origin populations believed that their streets were also under constant undercover police surveillance and noted some specific locations where surveillance by police cameras was visible.

The counter-radicalisation, 'Stop Radicalism'⁶ initiative, has enrolled ordinary Spanish citizens into the state security and surveillance apparatus. The website encourages everyone to report his or her suspicions about anyone that they think may be 'radicalised'. This further intensifies the sense among Muslims of being under suspicion from their colleagues and neighbours.

"[...] you feel that you are watched, observed, you know. And that happens, from the police to the people, you know, because in the end, your neighbour, even if he is your neighbour, can be a police watchman [...] I think they are sometimes waiting for some Moor to do something [...] While their Catalan or Spanish children are playing in the same neighbourhood, you know [...] But if a Moorish child does something. But of course, police surveillance affects neighbours, who eventually end up doing police work. You don't feel safe in any context".

2. Transparency and accountability

Citizens and civil society organisations need knowledge of counter-terrorism measures in order to hold the state to account for discrimination and the violation of rights and to ensure safety and security for all. Civil society actors highlighted the limited information available on key aspects of counter-terrorism measures. There was particular concern about the lack of discussion and information on the development and implementation of counter-radicalisation policies. The state's reluctance to share information about counter-terrorism and counter-radicalisation policies and procedures contributes to perceptions that the administration indirectly recognise such policies are stigmatising and discriminatory.

As one civil society activist noted:

"We were outraged as a Muslim community that the (counter-radicalisation) Protocol was carried out in secret from the community. If they did so, it is because they knew that the community would not accept it. And that social movements would be scandalised. The families of the schools were not notified. Right now, many families don't know it, the ones who know it are by means that are not official, through contact with social activists."

⁶ 'Stop Radicalism' accessed 01 April 2021, <https://stop-radicalismos.ses.mir.es/>

The lack of openness, on the roll out of the counter-radicalisation policy in schools in Catalonia, bolster suspicion that other undisclosed protocols are in operation. For example, the protocol being used by the Mossos d'Esquadra's⁷ officers in neighbourhoods with large migrant populations and in spaces for Muslim worship is not made public. However, several of the experts and activists interviewed confirmed that this protocol exists. When asked about this, an official leading Prevention Measures of this body said that it was a technical document which it was better not to disclose to the public.

3. Counter-radicalisation policies and institutional racism

Spain has a national strategy to counter violent radicalisation. It is not possible to determine the nature and scale of the counter-radicalisation policies across the whole of Spain as information on policies is restricted and data on numbers of cases is not systematically shared or published by the police and political authorities.

Local and regional prevention strategies, implicitly, and sometimes explicitly, identify North African Muslim youth as the main target population for counter-radicalisation policies. For example, the Catalan protocol makes a link between the level of integration and the degree of radicalisation. It securitises as factors or indicators of radicalisation, common migration experiences and processes, such as the challenges and difficulties experienced by young people when developing and reconciling different identities and cultures.

The policy identifies famous Spanish Moroccans and Arabs who assimilate into Catalan and Spanish culture as positive role models "of their community". This reinforces the perception that Muslims who downplay or renounce any religious identity are 'good Muslims' while those who express or display a religious identity are 'bad Muslims' and potential extremists.

With ethnicity, religion and age as the only common factors in the identification of North African Muslim youth as targets of counter-radicalisation policy, this approach stigmatises young racialised Muslims and reinforces the connection between their identities and violence. It

places them under suspicion because of who they are, not for anything they have done. Policy documents and counter-radicalisation training also link the risk of radicalisation to the lack of integration, to being an unaccompanied minor, and to Salafism⁸. Individuals within these categories are under greater risk of suspicion particularly when they make their religious identity visible.

The research fieldwork gathered data on the implementation of the counter-radicalisation policy in Catalonia. Training of state officials, including teachers, youth workers and social workers, to identify people at risk of radicalisation, appears to be a key element of the Catalan strategy. Officials were unwilling to share information on the indicators used to identify individuals at risk of radicalisation. Data provided by the Department of Education in Catalonia shows that between 2016 -2018, over 5500 public workers received training in identifying individuals at risk of radicalisation. During this period, schools in Catalonia activated the counter-radicalisation protocol⁹ in over 300 cases, resulting in information being sent to the Interior Ministry. We do not know the characteristics of these cases or whether action was taken by the police or judiciary.¹⁰

Interviews with practitioners involved in implementing the PVE policy in education in Catalonia suggest that it increases surveillance of Muslim students, with everyday religious expressions and actions triggering further scrutiny. A schoolteacher gave an example of a case where the protocol was initiated after a student was truant from school. Without the protocol, this would have been treated as a case of truancy alone, and the student would have a letter sent to her parents about her absence from school. The protocol was triggered because the student was friends with an individual whom the teacher thought may hold 'radical' ideas. This led to the police being notified and an investigation of the girl and her family and social environment, looking for possible indications of radicalisation. In explaining the decision to activate the

7 Autonomous Police of Catalonia, in charge of preventing radicalisation in Catalonia.

8 It is not clear in the political and police policies and speeches what is meant by Salafism or why it is considered a danger. Among academic experts there is significant disagreement on the salience of Salafism as an indicator and driver of radicalisation.

9 Since 2015 there is in Catalonia, the Prevention, Detection and Intervention Protocol in Islamist radicalisation processes -PRODERAI (<http://educacio.gencat.cat/documents/PC/ProjectesEducatius/PRODERAI-CE.pdf>). It is a protocol for the detection and prevention of radicalisation in education. It urges teachers to detect attitudes that can be considered suspicious and to report this to the police authorities. Teachers are trained on what attitudes to detect during a single training session delivered by the police.

10 Police officials involved in prevention policies who attended the roundtable informed us that most of the 300 cases involved right-wing extremism or views that could lead to hate crimes, furthermore that most cases did not involve the judiciary.

protocol, the interviewees allude to the pressures that school staff face to make referrals to security officials:

“As a school, we must activate it because if we do not do it and something happens, inspection comes and asks for explanations. We have the responsibility. The Mossos come to collect the information and that’s it. I sent an email to Mossos and the next day they were here”.¹¹

The interviews reveal the long-term adverse impact on families that are the direct subject of such surveillance. This example shows that counter-radicalisation policies are not necessarily used in the most appropriate cases but practitioners and institutions feel compelled to use them. It also shows that it is not even the views or actions of an individual that leads to intrusive investigation by the state into your private life; it is sufficient to be associated with someone thought to hold radical views.

4. Stigmatisation, suspicion and surveillance in everyday life

The perception of Muslims as dangerous and as a threat to public safety was a dominant feature of respondents’ experiences of everyday encounters.

“The feeling is that any news that has to do with Muslims or Moroccans is a possibility to attack us. The atmosphere is always prepared. At work, for example, my partner doesn’t stop saying that we must expel the Moors because they all put everyone’s safety at stake.”

“The worst thing is that we assume that this is normal. As we are Muslims this is our turn to live like this. I think it takes a radical change for things to be different. What is the role of the institutions? Protect society in general. In this case, one part of society is being protected from the alleged damage that another part could do. These institutions are causing damage to this last part. I feel discriminated against 24 hours a day, every day of the year. Just by the fact of being and declaring that I am a Muslim I become a suspect.”

For most respondents, state counter-terrorism and counter-radicalisation policies contribute to and reinforce the stereotypes and stigmatisation of Muslims as potential security threats.

“It’s the vision that any Muslim can be a potential terrorist, because I remember when after Paris, they said “we can’t trust anyone, because [the terrorists] were guys who seemed normal, Algerians from here [...] so any university classmate you see as normal any day can become a terrorist, ... I don’t know when going to university if any colleague of mine is watching me to see if one day, I will become a terrorist ... You are taking it for granted that by being Muslim you already have a feature that makes you a potential terrorist.”

“The look of suspicion has always been there. What these protocols do is to legitimise this type of view in schools because they take those suspicions of social racism and the institution validates them and puts tools to control this population.”

Such public attitudes are experienced as discriminatory in a number of ways. For example, respondents felt pressure, because they are Muslim, to openly and publicly condemn any act of terrorism, while such demands are not placed on their fellow non-Muslim citizens.

“I believe that the fact that we always feel the need to justify ourselves, to leave, to say “not in my name”, is also linked to fear. Because you say, I’m going to express myself, because if I don’t, the police will come later... It is an unconscious fear. Because if you were in a Muslim country, you would not go out to say that this is not Islam. Because you are not afraid of being blamed for simply being a Muslim.”

Connected to this, Muslims had to place themselves on the right side of “moderate/extremist” binary, to show that they were “moderate” in their views on political or social issues, as a precondition to entering the public space, which erodes their sense of equal citizenship.

11 Interview, counter-terrorism practitioner.

The Catalan counter-radicalisation policy recognises that there is a need for policies to address Islamophobia. However, the policy only identifies the presence of Muslim refugees in Europe and of terrorist attacks as the cause for increased Islamophobia. It does not acknowledge any link between policing and counter terrorism policies that view Muslims as a potential risk of radicalisation and public attitudes towards Muslims.

There is recognition that the language used in public policy on counter-terrorism and counter-radicalisation can reinforce stereotypes and discrimination, for example, the Catalan counter-radicalisation policy removed reference to Islamism for this reason. At first the title included "Islamist extremism" and after civil society complaints it was changed to "violent extremism". This is the current trend in all the existing literature, although we still find some mentions to 'jihadist' terrorism, even though the term jihad has roots in Islamic belief and has complex and contested meanings. Furthermore, the change in language does not reflect any wider change in political and police practices. While less discriminatory language is used, Muslims remain the focus of prevention and anti-terrorism policies.

4.1. Civil society: cooperation and coercion

Spain's approach to counter-terrorism seeks collaboration and partnership with civil society. While this approach may be well intentioned, the government should recognise the asymmetry in power relations between the state and civil society organisations from minority and marginalised communities.

Rather than mutual respect, acknowledgement, and support for community organisations in addressing the issues important to them, state support is contingent on collaboration on counter-radicalisation. Many Muslim civil society groups report feeling uneasy about collaboration and partnership in counter-radicalisation programmes, which they believe are used for surveillance and intelligence gathering. Furthermore, government officials do not always consult with them on the development of counter-terrorism legislation and policies.

Muslim organisations, particularly mosques, report visits by security services who question them, seeking intelligence and information about their community and want them to work in partnership and collaboration on counter-terrorism. Civil society organisations feel requests for partnership and cooperation are underpinned by threats of greater scrutiny and surveillance, as an unwillingness to cooperate is seen as a sign or indicator of extremism and radicalisation. Some mosques have normalised the need to prove their 'good citizenship' for example by recording their Friday sermons so that these are available for the security services if needed.

4.2. Pre-trial detention and deportation

The Spanish legal system allows for pre-trial detention for up to four years. Prolonged pre-trial detention should be exceptional and imposed only when strictly necessary. However, lengthy pre-trial detention is common in terrorism cases. There have been cases of pre-trial detention of more than three years' and all other terrorist related cases have a minimum of two years.

There is significant concern surrounding the use of pre-trial detention. In the experience of civil society actors, a large number of those detained are eventually released without charge. This could indicate two things: that the indications that lead to an accusation of terrorism are very weak causing the judicial investigation to fail to find sufficient evidence; or that, detection protocols are too broad. There is particular concern about both the impact of pre-trial detention on individuals and their families and the lack of support given to them when a person is found innocent through the investigation. The situation of families varies. This has a particularly acute impact in families where the person detained is the main income earner in the family. The stigma of being under investigation also means the family are often ostracised and receive little support in the wider community.

Our interviews suggest that immigration laws are being used to deport individuals on the grounds of the threat they pose to national security. Interviewees suggest that deportation of imams who are foreign nationals are used to bypass more stringent evidential requirements required by criminal law. As an administrative measure, such deportations attract less stringent procedural safeguards than if the individual was charged and tried for an offence such as glorification of terrorism.

There are three prominent cases in which attempts were made to deport imams:

- The president of the Islamic Cultural Center Imam Malik de Salt, Mohammed Attaouil whose expulsion was paralysed by social mobilisation¹².
- The imam of the Zuera penitentiary (Zaragoza), Fawaz Nahhas who was expelled from his position for suggesting the 2017 attacks in Barcelona were connected to Spain's military actions in the Middle East.¹³
- The Egyptian imam Alaa Muhammad Said from Logroño who was given a week to leave Spain and was imprisoned on his return to Egypt¹⁴.

Civil society actors report that the threat of deportation is used to pressure individuals in the community, particularly imams, to cooperate and collaborate with the security services. In some instances, deportation is reported to have been offered as an alternative to prosecution to those held in pre-trial detention. Such an approach would be an abuse of power, contrary to the rule of law and undermining equality under the law.

12 P Santos, 'Interior propone expulsar de España a un líder religioso de Salt' *El Periodico* (9 September 2018), accessed 01 April 2021, <https://www.elperiodico.com/es/politica/20180909/expulsion-salt-mohamed-attaouil-7025709>

13 Oliver Duch, 'Interior reincorpora a la prisión de Zuera al imán que expulsó por vincular los atentados de Cataluña con misiones en el exterior' [Interior reinstates the imam he expelled to the Zuera prison for linking the attacks in Catalonia with missions abroad] *Heraldo* (17 November 2018) accessed 1 April 2021 <https://www.heraldo.es/noticias/aragon/zaragoza/2018/11/17/interior-reincorpora-prision-zuera-iman-que-zoido-expulso-por-relacionar-los-atentados-cataluna-con-misiones-exterior-1278172-2261126.html>

14 Francisco Carrion, 'El imam de Logroño, de la expulsión exprés en España a una cárcel egipcia' [Fast-track expulsión of the imam of Logroño in Spain to an Egyptian jail] *El Mundo* (24 September 2018) accessed 1 April 2021 <https://www.elmundo.es/espana/2018/09/24/5ba7b4fd46163f20468b4669.html>

RECOMMENDATIONS

The following policy recommendations were developed in dialogue with civil society organisations, policy makers and practitioners during two roundtables in Barcelona.

-  Ensure greater transparency in relation to counter-radicalisation policies and their implementation by:
 - Publishing information on all counter-radicalisation policies;
 - Collecting and publishing annual data on the number of individuals identified for referral to security officials through counter-radicalisation protocols and the outcome of referrals;
 - Publish annual information about the content of the training on counter-radicalisation provided to public bodies including schools.
-  When developing or reviewing counter-terrorism and counter-radicalisation policies ensure engagement with a wide range of Muslim civil society organisations, reflecting and acknowledging the diversity of Muslim communities, especially women, youth and migrants.
-  Support for the community work of Muslim organisations should not be contingent on their involvement or participation in radicalisation prevention programmes.
-  Develop and support initiatives to increase awareness and knowledge of fundamental rights and freedoms among Muslim and minority groups impacted by counter-terrorism and counter-radicalisation measures and develop projects to monitor and document any violations of rights and freedoms they experience.

 5 Establish a comprehensive action plan to fight Islamophobia, racism and discrimination. Understand Islamophobia as a form of structural racism.

 6 Require equality impact assessments to be carried out on all counter-terrorism and counter-radicalisation laws and policies.

 7 Establish an independent monitoring and evaluation body to review the implementation of counter-terrorism and counter-radicalisation legislation and policy. Such a body should be required to engage civil society organizations, especially reflecting communities most directly impacted by counter-terrorism and counter-radicalisation measures.

 8 Guarantee a fair police and judicial process, without discrimination and with regard to human rights, for people accused of terrorism or radicalisation.

 9 Establish tools of economic, social and media reparation for people who have been accused or investigated for “terrorism” but found to be innocent in order to mitigate the effects of stigmatization they suffer. Ensure that the existing means of economic repair work and reach those interested.



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